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Attorneys for Plaintiff
L & M TIRE COMPANY, a California corporation
doing business as EXPRESS TIRE

FILED
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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

L & M TIRE COMPANY, a California corporation doing business as EXPRESS TIRE, Plaintiff, v. DN INVESTMENT GROUP, LLC, a New Jersey limited liability company, and DOES 1-10, inclusive Defendant.	CASE NO.: '08 CV 0368 BTM LSP COMPLAINT FOR CYBERSQUATTING, FEDERAL TRADEMARK INFRINGEMENT, AND UNFAIR COMPETITION UNDER SECTION 43(A) OF THE LANHAM ACT, AND CALIFORNIA LAW; DEMAND FOR JURY TRIAL

Plaintiff L & M TIRE COMPANY, INC., a California corporation, alleges as follows:

PARTIES

1. Plaintiff L & M TIRE COMPANY, INC. is a California corporation formed in 1971 which does business under the trade name "EXPRESS TIRE," for which it has properly filed fictitious business name registrations. Hereafter in this Complaint, plaintiff is referred to as "EXPRESS TIRE."

2. On information and belief and based thereon, defendant DN INVESTMENT GROUP, LLC (hereafter "DN INVESTMENT") is a limited liability company organized under the laws of the State of New Jersey, with Theodore Podhorcer, 14 Haller Road, West Orange, New Jersey 07052, listed as its Agent according to records on file with the State of New Jersey.

Defendant DN INVESTMENT maintains a website on the Internet at the address www.dninvestmentgroup.com. The website lists DN INVESTMENT's address as P.O. Box 292-WOB, West Orange, New Jersey 07052. The website homepage indicates that DN INVESTMENT owns and operates a portfolio of domain names and associated web sites, and provides original content and links to relevant content. DN INVESTMENT's websites, the homepage states, range from advertising gateways to developed web sites.

3. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOE 1 through DOE 10, inclusive, are unknown to plaintiff who therefore sues said defendants by such fictitious names. Plaintiff further alleges that each of said fictitious DOE defendants is in some manner responsible for the acts and occurrences hereinafter set forth. Plaintiff will amend this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious defendant is responsible for the damages sustained by plaintiff.

4. Plaintiff is informed and believes and based thereon alleges that each defendant was the agent, alter-ego, joint venturer, servant and employee of each other defendant, and in performing the acts described in this Complaint, was acting in the scope of his, her, or its authority with the consent of each other Defendant. Each defendant ratified and/or authorized the wrongful acts of each of the other defendants.

5. The above named defendants and the fictitiously named DOE defendants (collectively, "defendants") are jointly and severally liable and are legally responsible for the wrongful conduct that caused the damages to plaintiff as alleged in this Complaint.

JURISDICTION AND VENUE

6. This is an action for cybersquatting, trademark infringement, and unfair competition arising under the Federal Trademark Act, the Anticybersquatting Consumer Protection Act, and the Lanham Act, 15 U.S.C. § 1051 et seq. This Court has jurisdiction of the subject matter and the parties under 15 U.S.C. § 1121(a), and 28 U.S.C. §§ 1331 and 1338. Additionally, this Court has jurisdiction over defendants pursuant to the "Effects Doctrine" as defendants have "purposefully availed [themselves] of or directed [their] activities toward"

residents of California by, among other things, registering the trademark of a California corporation, Express Tire, as a domain name, directing defendants' website advertising and links to residents of California, and directing Internet users to websites of and concerning competitors of plaintiff that are themselves doing business in and competing directly with plaintiff in the Southern District of California.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district, inasmuch as it is in this judicial district where the confusion among consumers is likely to occur, creating damage to the value of plaintiff's service marks.

COMMON ALLEGATIONS

8. EXPRESS TIRE is the owner of the following distinctive service marks registered on the Principal Register of the United States Patent and Trademark Office:

(1) EXPRESS TIRE AUTO SERVICE CENTER # 1 IN SERVICE, Registration No. 2310444, registered on January 25, 2000, for which a true and correct copy of the Registration Certificate is attached hereto as **Exhibit 1** and incorporated herein by reference;

(2) EXPRESS TIRE.COM AUTO SERVICE CENTER, Registration No. 2773145, registered on October 14, 2003, for which a true and correct copy of the Registration Certificate is attached hereto as **Exhibit 2** and incorporated herein by reference;

(3) EXPRESS TIRE, Registration No. 2829191, registered on April 6, 2004, for which a true and correct copy of the Registration Certificate is attached hereto as **Exhibit 3** and incorporated herein by reference.

9. EXPRESS TIRE has used the "EXPRESS TIRE" portion of the mark in commerce for approximately 25 years and added the ".COM" portion of the mark in approximately January 1999. EXPRESS TIRE has automotive service centers throughout Southern California. The mark is prominently displayed on and in each of these centers and in advertisements for products and services provided at each of the centers.

10. EXPRESS TIRE has used the mark for EXPRESS TIRE for almost 20 years in its advertisements in newspapers, magazines, direct mailers, on the radio and on the Internet, in store

displays and on its service centers. By 1997, EXPRESS TIRE was spending in excess of $1 million per year to advertise its services under the mark in San Diego County and Southern California. As of 2002, EXPRESS TIRE has spent in excess of $2 million per year to advertise its services under the mark. EXPRESS TIRE's consumers, when seeing the mark on advertisements, coupons and at its service centers, recognize the mark as identifying the services of a single source, namely, EXPRESS TIRE. EXPRESS TIRE's mark is an established and widely recognized commercial symbol identifying its services and it distinguishes EXPRESS TIRE's services from the goods and services of competitors. When a consumer obtains a service from one of EXPRESS TIRE's service centers, the consumer assumes the service comes from the same source and is of equal quality with all other services provided under EXPRESS TIRE's mark.

11. By the late 1990's, EXPRESS TIRE had registered the domain name expresstire.com, and from as early as December 1998, has continuously used and updated its website at expresstire.com to advertise its automobile repair and maintenance services, tire rotating and balancing services, automobile service station services, and retail tire store services. On April 11, 2002, EXPRESS TIRE applied for a federal registration for the trademark including the term Express Tire.com, as alleged above, and shown in the federal registration that was granted by the United States Patent and Trademark Office, a copy of which is attached as Exhibit 2.

12. In August 2007, EXPRESS TIRE inadvertently did not renew its registration of the domain name expresstire.com.

13. In September 2007, on information and belief and based thereon, defendants DN INVESTMENT and/or defendants DOES 1-10 registered the domain name expresstire.com. Attached hereto as **Exhibit 4** is a true and correct copy of the WHOIS registry data showing the registrant as of approximately September 13, 2007 as "Administrator, Domain" with an email address of dns@dninvestmentgroup.com, and a mailing address of P.O. Box 292-WOB, West Orange, New Jersey 07052. Attached as **Exhibit 5** is a true and correct copy of the website www.dninvestmentgroup.com, which is identified as the website for DN Investment Group, LLC,

a company that "owns and operates a portfolio of domain names and associated web sites." The contact information shown for DN Investment Group, LLC is "P.O. Box 292-WOB, West Orange, New Jersey 07052" and admin@dninvestmentgroup.com.

14. Upon discovering that its domain name registration for expresstire.com had lapsed inadvertently, EXPRESS TIRE contacted its counsel, who performed some investigation and promptly wrote a letter dated October 9, 2007 to DN INVESTMENT, to the attention of Theodore Podhorcer aka Ted Podhorcer, agent of DN INVESTMENT. The letter identified EXPRESS TIRE's trademark registrations and trademark rights, and stated the circumstance of the inadvertent lapse of EXPRESS TIRE's domain name registration for expresstire.com. The letter also informed DN INVESTMENT and Mr. Podhorcer of the impropriety of DN INVESTMENT's website at www.expresstire.com, and requested a response and cooperation in transferring the domain back to EXPRESS TIRE. The letter was sent via certified mail return receipt requested to DN INVESTMENT's mailing address at P.O. Box 292-WOB, West Orange, New Jersey 07052 and to the mailing address for Ted Podhorcer on file with the state of New Jersey – 14 Haller Rd, West Orange, New Jersey 07052. The letter was also sent via Federal Express to the mailing address for Ted Podhorcer on file with the state of New Jersey. The letter was also sent to DN INVESTMENT via email to the two known email addresses, dns@dninvestmentgroup.com, and admin@dninvestmentgroup.com. A true and correct copy of the letter dated October 9, 2007 is attached hereto as **Exhibit 6**.

15. Neither Mr. Podhorcer, nor DN INVESTMENT responded to the letter from EXPRESS TIRE counsel dated October 9, 2007.

16. On information and belief and based thereon, investigation of the currently existing website and current WHOIS registration database information indicates that defendants, in conjunction with the services of a third party, have posted a website at www.expresstire.com that confuses Internet users and plaintiff's customers, diverts Internet users and plaintiff's customers to competitors of EXPRESS TIRE, and takes advantage of EXPRESS TIRE's marks and goodwill associated therewith to generate revenue and other benefits for defendants.

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COUNT I - CYBERSQUATTING

(Against Defendant DN INVESTMENT and DOES 1-10)

17. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 16 herein as if fully set forth.

18. Defendants have registered and used the domain name, expresstire.com.

19. The domain name, expresstire.com, is identical to or confusingly similar to trademarks owned by, used continuously by, and which are federally registered by plaintiff EXPRESS TIRE.

20. EXPRESS TIRE's trademarks are and were distinctive at the time of defendants' registration in September 2007 of the domain name, expresstire.com.

21. On information and belief and based thereon, defendants' acts alleged above were committed with a bad faith intent to profit from plaintiff's trademarks. On information and belief and based thereon:

(a) Defendants have no trademark or other intellectual property rights in the domain name expresstire.com, and defendants actually knew, and at a minimum, were on constructive notice of plaintiff's trademarks rights, given plaintiff's federal registrations;

(b) Defendants had no prior use of the domain name expresstire.com in connection with any bona fide offering of any goods or services;

(c) Defendants use the domain name expresstire.com commercially to generate revenue and gain other benefits;

(d) Defendants intend and successfully do divert consumers from EXPRESS TIRE's prior online location to sites accessible under the domain name that could harm the goodwill represented by EXPRESS TIRE's marks, and do so for commercial gain;

(e) Defendants seek to evade responsibility for the domain name registration and content of the website posted on the domain name expresstire.com, by failing to include the action name of the registrant on the WHOIS domain name registry database, and instead, only listing "Administrator, Domain."

///

(f) Defendants themselves and through affiliates, such as TMP Capital LLC, DN Investment Group II LLC, and DN Investment Group III LLC, have registered or acquired multiple domain names, such as CalCloset.com[1], which they knew are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties;

(g) Defendants have no reasonable basis for any belief or grounds to believe that the use, and the continued use of the domain name, was or is a fair use or otherwise lawful.

22. As a result of defendants' acts in registering the domain name expresstire.com and using the domain name expresstire.com, including without limitation, the posting of a website for profit that confuses Internet users, diverts users to competitors, and falsely designates the source or origin of services, EXPRESS TIRE has suffered harm for which there is no adequate remedy at law, thereby entitling plaintiff EXPRESS TIRE to immediate preliminary injunctive relief and permanent injunctive relief, including but not limited to an order for the forfeiture or cancellation of the domain name or the transfer of the domain name to EXPRESS TIRE.

23. As a direct result of the acts of defendants, EXPRESS TIRE also has suffered damages in the form of lost profits and/or lost sales and damage to its goodwill in an amount up to three times the amount proven at trial, plus its costs, or alternatively, at plaintiff's election, plaintiff is entitled to statutory damages in an appropriate amount to address defendants' actions and to afford appropriate relief to EXPRESS TIRE, plus costs.

24. Additionally, due to the willful, wanton, deliberate, and bad faith actions of defendants, plaintiff EXPRESS TIRE is entitled to an award of reasonable attorneys' fees.

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[1] This was the subject of a Uniform Domain Name Dispute Resolution proceeding filed by California Closets Company, Inc., headquartered in San Rafael, California, through the WIPO Arbitration and Mediation Center, Case No. D2006-1359; see decision of administrative panel at http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-1359.html

COUNT II - TRADEMARK INFRINGEMENT

(Against All Defendants)

25. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 24 herein as if fully set forth.

26. Plaintiff EXPRESS TIRE is the owner of three service marks registered on the Principal Register of the United States Patent and Trademark Office, as shown in Exhibits 1 through 3 to this Complaint.

27. EXPRESS TIRE has used the "EXPRESS TIRE" portion of the mark in commerce for approximately 25 years and added the ".COM" portion of the mark in approximately January 1999. EXPRESS TIRE has expended substantial sums in promoting and advertising its services under its marks, including but not limited to significant expenditures to establish and maintain its Internet website at www.expresstire.com

28. As a result of the extensive and substantial advertising and sales of services under its marks, its marks are well known to the public as a distinctive indication of the origin of EXPRESS TIRE's services.

29. On information and belief and based thereon, defendants obtained the Internet domain name registration of expresstire.com on or about September 13, 2007. Defendants' registration of expresstire.com was obtained well after EXPRESS TIRE began using its marks in connection with the advertising and promotion of its services in interstate commerce, and well after registration certificates had issued for plaintiff's marks by the United States Patent and Trademark Office.

30. Despite constructive notice, and on information and belief, despite having actual notice of plaintiff's marks, defendants registered the domain name expresstire.com. On information and belief, after registering the domain name, defendants caused the set up and operation of a website at expresstire.com for the purpose of deriving revenues and other benefits from advertising and providing links to other Internet websites in a manner that confuses consumers (including but not limited to confusion of the "initial interest" variety), and diverts Internet users and EXPRESS TIRE's customers to others, including competitors, thereby trading

on EXPRESS TIRE's marks, the association of the public with those marks, and EXPRESS TIRE's goodwill.

31. Attached hereto as **Exhibit 7** is a true and correct copy of a printout showing the website posted at expresstire.com following defendants' registration of the domain name, expresstire.com.

32. Defendants' registration of the domain name expresstire.com, and posting and maintenance of their website at expresstire.com (as shown in Exhibit 7 hereto) make use in commerce of EXPRESS TIRE's marks or colorable imitations thereof, in a manner likely to cause confusion or mistake and/or likely to deceive EXPRESS TIRE's customers and those seeking EXPRESS TIRE's services or information concerning EXPRESS TIRE's services, in violation of EXPRESS TIRE's rights under 15 U.S.C. § 1114(a), and at common law.

33. On information and belief, plaintiff alleges that defendants intentionally and deliberately used EXPRESS TIRE's registered marks and continues to do so, such that defendants' actions rise to the level of an exceptional case such that EXPRESS TIRE is entitled to reasonable attorneys' fees.

34. As a direct and proximate result of the infringement by defendants, EXPRESS TIRE has suffered damages in the form of lost profits and/or lost sales and damage to its goodwill, and plaintiff is entitled to recover up to three times the amount proved at trial, as well as its costs. Additionally, and/or alternatively, defendants have unjustly and improperly derived revenue and other profits from their infringing use and should be required to account for and pay such profits or an amount that the court deems is just, to plaintiff.

35. Additionally, EXPRESS TIRE is entitled to preliminary and permanent relief enjoining defendants from making use of the domain name, operating a website at www.expresstire.com, engaging in any other activity constituting an infringement of plaintiff's marks, and directing defendants to cause the registration of the domain name to be transferred back to EXPRESS TIRE.

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COUNT III - UNFAIR COMPETITION

(Against All Defendants)

36. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 35 herein as if fully set forth.

37. Defendants have engaged in acts of unfair competition under section 43(a) of the Federal Lanham Act, 15 U.S.C. § 1125(a), California Business and Professions Code § 17200, and under common law, by engaging in the acts alleged above, and additionally, by violating plaintiff's rights in its trade name EXPRESS TIRE.

38. Defendants' registration of the domain name expresstire.com, and use of plaintiff's marks on the website posted at expresstire.com in the manner alleged above is deceptive and/or likely to cause confusion or mistake, or to deceive the public and plaintiff's customers as to the affiliation, connection or association with plaintiff EXPRESS TIRE, as well as to the source, origin, approval or sponsorship of services and commercial activities.

39. In addition, the actions of defendants alleged above confuse or deceive the public by creating "initial interest confusion," constituting unfair competition under 15 U.S.C. § 1125(A), for which immediate preliminary and permanent injunctive relief is appropriate.

20. On information and belief and based thereon, EXPRESS TIRE alleges that defendants' acts constituting unfair competition rise to the level of an exceptional case such that EXPRESS TIRE is entitled to an award of reasonable attorneys' fees.

41. As a direct and proximate result of defendants' acts constituting unfair competition, EXPRESS TIRE has suffered damages in the form of lost profits and/or lost sales and damage to its goodwill, and plaintiff is entitled to recover up to three times the amount proved at trial, as well as its costs. Additionally, and/or alternatively, defendants have unjustly and improperly derived revenue and profits from their acts of unfair competition and should be required to account for and pay such profits or an amount that the court deems is just, to plaintiff.

42. Additionally, EXPRESS TIRE is entitled to preliminary and permanent relief enjoining defendants from making use of the domain name, operating a website at www.expresstire.com, engaging in any other activity constituting unfair competition or an

infringement of plaintiff's marks or trade name, and directing defendants to cause the registration of the domain name to be transferred back to EXPRESS TIRE.

REQUEST FOR JURY TRIAL

Plaintiff EXPRESS TIRE respectfully requests a jury trial as to all issues and causes of action, as allowable under law.

PRAYER

WHEREFORE, plaintiff EXPRESS TIRE respectfully prays as follows:

(1) The court enter judgment that:

(a) Defendants have violated the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1)(A);

(b) Defendants have infringed the rights of plaintiff EXPRESS TIRE under its federally registered marks under 15 U.S.C. § 1114(1), and/or at common law;

(c) Defendants have competed unfairly under 15 U.S.C. § 1125(a), California Business and Professions Code § 17200 and under common law;

(2) The court enter an order affording EXPRESS TIRE with preliminary and permanent injunctive relief enjoining defendants from making use of the domain name expresstire.com, from operating a website at www.expresstire.com, from engaging in any other activity constituting an infringement of plaintiff's marks or otherwise constituting unfair competition, and directing defendants to cause the registration of the domain name expresstire.com to be transferred back to EXPRESS TIRE;

(3) For an award of up to three times plaintiff's lost profits, lost business and damage to its goodwill, or alternatively, for an award of defendants' profits or such increased amount as the court deems appropriate under the facts;

(4) For an award of costs;

(5) For a determination that defendants' conduct was exceptionally willful and deliberate, and an award of reasonable attorneys' fees pursuant thereto;

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(6) For such further relief as the court deems equitable, just and appropriate.

DATED: February 27, 2008

DUCKOR SPRADLING METZGER & WYNNE
A Law Corporation

SCOTT L. METZGER
DOUGLAS W. LYTLE
Attorneys for Plaintiff
L & M Tire Company, a California corporation
doing business as Express Tire

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5	Website www.dninvestmentgroup.com	19-22
6	October 9, 2007 letter to Theodore Podhorcer of DN Investments	23-34
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EXHIBIT "1"

Int. Cl.: 37

Prior U.S. Cls.: 100, 103 and 106

Reg. No. 2,310,444

Registered Jan. 25, 2000

United States Patent and Trademark Office

SERVICE MARK
PRINCIPAL REGISTER

L & M TIRE COMPANY, INC. (CALIFORNIA CORPORATION)
1148 INDUSTRIAL AVENUE
ESCONDIDO, CA 92029

FOR: AUTOMOBILE SERVICES, NAMELY, TIRE INSTALLATION AND REPAIR AND AUTOMOTIVE REPAIR, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1990.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AUTO SERVICE CENTER #1 IN SERVICE" AND "TIRE", APART FROM THE MARK AS SHOWN.

SER. NO. 75-431,643, FILED 2-10-1998.

MATTHEW KLINE, EXAMINING ATTORNEY

EXHIBIT "2"

Int. Cls.: 35 and 37

Prior U.S. Cls.: 100, 101, 102, 103 and 106

Reg. No. 2,773,145

Registered Oct. 14, 2003

United States Patent and Trademark Office

SERVICE MARK
PRINCIPAL REGISTER

EXPRESS TIRE.com
Auto Service Center

L & M TIRE COMPANY, INC. (CALIFORNIA CORPORATION)
1148 INDUSTRIAL AVENUE
ESCONDIDO, CA 92029

FOR: RETAIL TIRE STORE SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

FOR: AUTOMOBILE REPAIR AND MAINTENANCE SERVICES; TIRE ROTATING AND BALANCING SERVICES; AUTOMOBILE SERVICE STATION SERVICES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AUTO SERVICE CENTER", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 76-394,657, FILED 4-11-2002.

JILL C. ALT, EXAMINING ATTORNEY

EXHIBIT "3"

Int. Cls.: 35 and 37

Prior U.S. Cls.: 100, 101, 102, 103 and 106

Reg. No. 2,829,191
Registered Apr. 6, 2004

United States Patent and Trademark Office

SERVICE MARK
PRINCIPAL REGISTER

EXPRESS TIRE

L & M TIRE COMPANY, INC. (CALIFORNIA CORPORATION)
1148 INDUSTRIAL AVENUE
ESCONDIDO, CA 92029

FOR: RETAIL TIRE STORE SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

FOR: AUTOMOBILE REPAIR AND MAINTENANCE SERVICES; TIRE ROTATING AND BALANCING SERVICES; AUTOMOBILE SERVICE STATION SERVICES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NO. 2,310,444.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TIRE", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 76-394,658, FILED 4-11-2002.

JILL C. ALT, EXAMINING ATTORNEY

EXHIBIT "4"

NetworkSolutions. Call us 1-800-333-7680 Shopping Ca
Login Help

WHOIS Search Results

Available **expresstire** extensions:

.org	.us	.mobi	.info	.biz	.de	.tv	.co.uk	.eu	.bz
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Order Selected Domain(s) >>

Got the pow
dedicated se
a fraction of t

Your WHOIS Search Results

expresstire.com
Services from Network Solutions:

- Certified Offer Service - Let us help you get this domain name!
- Backorder - Try to get this name when it becomes available.
- Private Registration - Keep personal information for this domain private.
- SSL Certificates - Get peace of mind with a secure certificate.
- Enhanced Business Listing - Promote your business to millions of viewers for only $1 a month!

Visit AboutUs.org for more information about EXPRESSTIRE.COM AboutUs: EXPRESSTIRE.COM

Registrant: Make this info private
Administrator, Domain

PO Box 292-WOB
null
West Orange, NJ 07052
US

Domain Name: EXPRESSTIRE.COM

*

Promote your business to millions of viewers for only $1 a month!

DOMAIN (
Prem
☐ tiree.n $2,488
☐ chulavi $950
☐ expres $770
☐ tiresia. $1,888
☐ sandie $750
☐ fgexpr $300
☐ tireser $688

Simil
☐ myexp
☐ e-expr
☐ aboute
☐ expres

EXHIBIT 4
PAGE 16

Learn how you can get an Enhanced Business Listing here for your domain name.

Learn More

Administrative Contact , Technical Contact :
Administrator, Domain
dns@dninvestmentgroup.com
PO Box 292-WOB
null
West Orange, NJ 07052
US
Phone: +1.9736690665
Fax: null

Record expires on 04-Aug-2008
Record created on 05-Aug-1996
Database last updated on 12-Sep-2007

Domain servers in listed order: Manage DNS

NS1.PARKINGSPA.COM	67.96.63.121
NS2.PARKINGSPA.COM	216.141.176.128

Show underlying registry data for this record

Current Registrar:	NETWORK SOLUTIONS, LLC.
IP Address:	66.246.195.42 (ARIN & RIPE IP search)
IP Location:	US(UNITED STATES)-NEW YORK-NEW YORK
Record Type:	Domain Name
Server Type:	Apache 2
Lock Status:	clientTransferProhibited
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Secure:	No
E-commerce:	No
Traffic Ranking:	0
Data as of:	30-Nov-2007

*

expres

SEARCH A
Enter a sear
e.g. network
Search by:
Domain
NIC Ha
IP Addr

Need to get your business online?
Our professional designers can build a custom Web site for your business.
Go

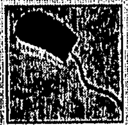
PerformanceClicks™ from Network Solutions
Create and manage your pay per click advertising from as low as **$125/month** plus **$99**
Go

EXHIBIT 4
PAGE 17

$11.95/month, plus a $499.00 design fee	one time set-up fee	

"An outstanding customer service experience" J.D. Power and Associates

100% Secure Transaction

For your protection, this Web site is secured with the highest level of SSL Certificate encryptic

© Copyright 2008 Network Solutions. All rights reserved

EXHIBIT 4
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EXHIBIT "5"

DN Investment Group LLC.

Portfolio
Contact

Welcome to DN Investment Group LLC. DN Investment Group was formed in 2006, it owns and operates a portfolio of domain names and associated web sites. Our internet properties are accessed by internet users via a type-in in their browser's address bar (also referred to as "direct navigation") and via search engine results. We in turn provide value by providing original content and links to relevant content with the singular objective of helping each site visitor access the products, services or content they desire.

DN Investment Group's goal is to build each of our web sites into web destinations that provide value. Sites are currently at various levels of development: from advertising gateways to developed web sites. We continually review and enhance our web properties to ensure that they are relevant, simple and most importantly, helpful.

EXHIBIT 5
PAGE 19

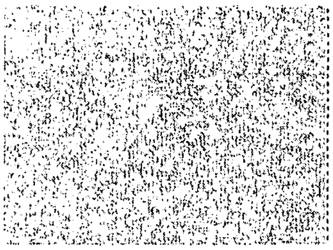

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EXHIBIT 5
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DN Investment Group LLC.

Contact

Home

Portfolio

Contact

DN Investment Group LLC.
PO Box 292-WOB
West Orange, NJ 07052

973-669-0665
Admin@DNinvestmentgroup.com

EXHIBIT 5
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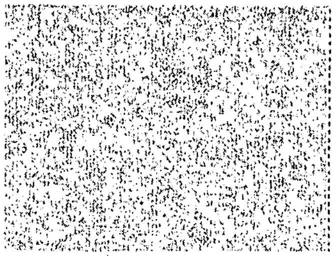

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EXHIBIT "6"

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MICHAEL A. REED
ROBERT M. SHAUGHNESSY
BRYN C. SPRADLING
GEOFFREY C. CHACKEL
KEVIN L. WHEELER
VIVIAN W. SHULTZ
DOUGLAS W. LYTLE
SCOTT M. LOHNES**‡
ANNETTE C. CLARK
LAURA E. PEREIRA‡
JUSTIN D. HOLLANDER

**ADMITTED IN INDIANA ONLY
*CERTIFIED SPECIALIST, TAXATION LAW STATE BAR OF CALIFORNIA BOARD OF LEGAL SPECIALIZATION
‡REGISTERED PATENT ATTORNEY

OF COUNSEL
JERRY M. CANNON
TYLER W. CRAMER
JOHN H. QUINN, JR.

October 9, 2007

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED AND EMAIL (dns@dninvestmentgroup.com; Admin@DNinvestmentgroup.com)

Ted Podhorcer
P.O. Box 292-WOB
West Orange, NJ 07052

Theodore M. Podhorcer
14 Haller Rd
West Orange, NJ 07052-2030

Re: Domain Name Registration - expresstire.com

Dear Mr. Podhorcer:

We represent L & M Tire Company, Inc., a California corporation that does business as Express Tire, which is the owner of the following trademarks registered on the Principal Trademark Register at the United States Patent and Trademark Office:

(1) EXPRESS TIRE

(USPTO Reg. No. 2829191; April 6, 2004 – see Attachment A.)

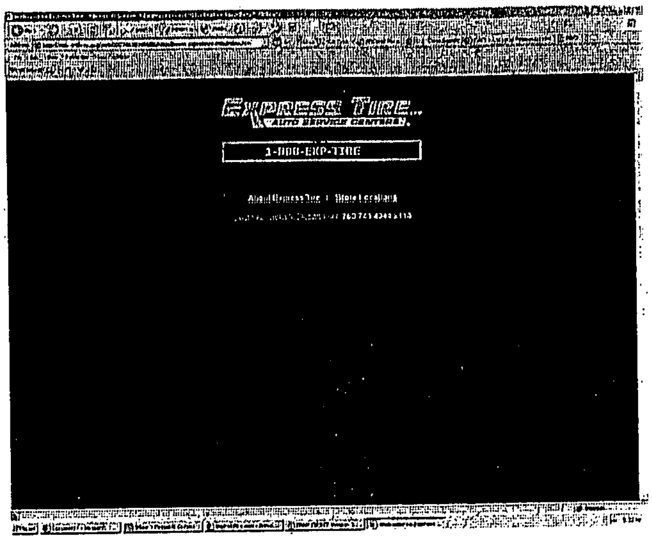
(2) EXPRESS TIRE.com Auto Service Center

(Reg. No. 2773145; October 14, 2003 – see Attachment B.)

It has come to our attention that you recently registered the domain name, expresstire.com, through the domain name registrar Network Solutions. Express Tire has used the expresstire.com domain name continuously since August 1996:

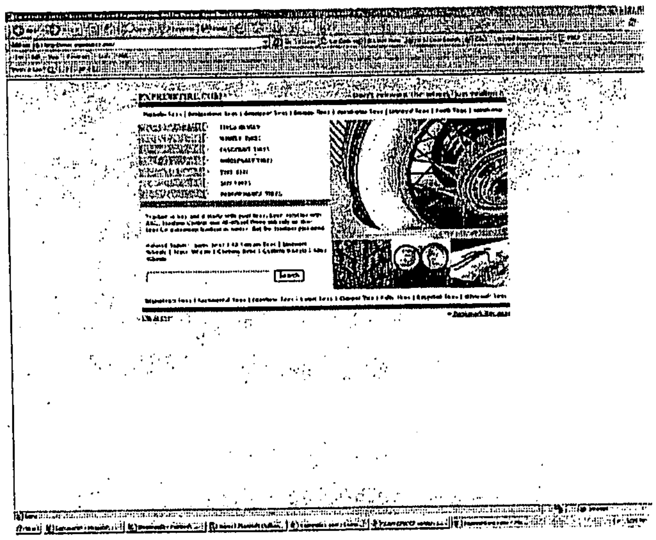
DUCKOR SPRADLING METZGER & WYNNE
A LAW CORPORATION

Theodore M. Podhorcer
Page 2
October 9, 2007



Express Tire's registration of expresstire.com inadvertently lapsed during the most recent renewal period. It appears that it was during the brief period of lapse in registration that you registered the domain name expresstire.com in your own name, with your name and business entity, DN Investment Group aka DN Investment Group LLC, listed as Administrator.

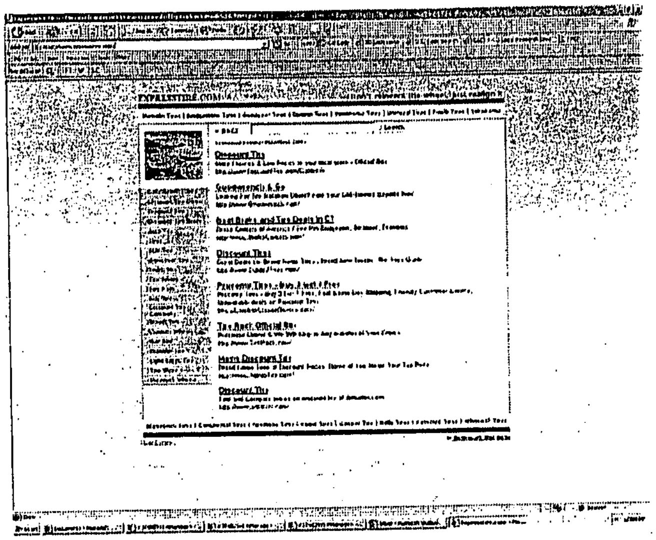
Following your registration of expresstire.com, a website was put up that diverts Internet users to various commercial websites:



DUCKOR SPRADLING METZGER & WYNNE
A LAW CORPORATION

Theodore M. Podhorcer
Page 3
October 9, 2007

For instance, clicking on "Discount Tires" diverts Internet users to listings for Discount Tire, Goodwrench & Go, and Tire Rack, among others:



Express Tire has not ceased using and has not abandoned in any way its federally registered trademarks. Accordingly, Express Tire requests that you cooperate in directing Network Solutions (or whoever might subsequently become the registrar) to transfer the domain name, expresstire.com, back to Express Tire.

Although we would expect a legitimate domain name investment company to agree to transfer a domain name comprised of a federally registered trademark without unnecessary escalation, if you are unwilling to voluntarily transfer it back through this request, as you are aware[1], the ICANN Uniform Domain Name Dispute Resolution Policy (UDRP), as well as the federal Lanham Act, of which the Anticybersquatting Consumer Protection Act (ACPA) is a part, provide alternative procedures and remedies.

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///

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[1] INVESTools Inc v. Investools Inc c/o Domain Administrator (http://www.arb-forum.com/domains/decisions/671495.htm)

EXHIBIT 6
PAGE 25

DUCKOR SPRADLING METZGER & WYNNE
A LAW CORPORATION

To avoid the necessity of proceedings under the UDRP and/or the ACPA, we request that you confirm to us in writing by Friday, October 12, 2007, your willingness to immediately and voluntarily instruct Network Solutions to transfer the domain name, expresstire.com, back to L & M Tire Company, Inc. (dba Express Tire).

Thank you very much.

Sincerely,

DUCKOR SPRADLING METZGER & WYNNE
A Law Corporation

By: ____________________
Scott L. Metzger

Attachments

ATTACHMENT A

Int. Cls.: 35 and 37

Prior U.S. Cls.: 100, 101, 102, 103 and 106

Reg. No. 2,829,191

United States Patent and Trademark Office

Registered Apr. 6, 2004

SERVICE MARK
PRINCIPAL REGISTER

EXPRESS TIRE

L & M TIRE COMPANY, INC. (CALIFORNIA CORPORATION)
1148 INDUSTRIAL AVENUE
ESCONDIDO, CA 92029

FOR: RETAIL TIRE STORE SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

FOR: AUTOMOBILE REPAIR AND MAINTENANCE SERVICES; TIRE ROTATING AND BALANCING SERVICES; AUTOMOBILE SERVICE STATION SERVICES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

OWNER OF U.S. REG. NO. 2,310,444.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TIRE", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 76-394,658, FILED 4-11-2002.

JILL C. ALT, EXAMINING ATTORNEY

ATTACHMENT B

Int. Cls.: 35 and 37

Prior U.S. Cls.: 100, 101, 102, 103 and 106

Reg. No. 2,773,145

United States Patent and Trademark Office

Registered Oct. 14, 2003

SERVICE MARK
PRINCIPAL REGISTER

EXPRESS TIRE.com Auto Service Center

L & M TIRE COMPANY, INC. (CALIFORNIA CORPORATION)
1148 INDUSTRIAL AVENUE
ESCONDIDO, CA 92029

FOR: RETAIL TIRE STORE SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

FOR: AUTOMOBILE REPAIR AND MAINTENANCE SERVICES; TIRE ROTATING AND BALANCING SERVICES; AUTOMOBILE SERVICE STATION SERVICES, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FIRST USE 1-1-1984; IN COMMERCE 1-1-1984.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AUTO SERVICE CENTER", APART FROM THE MARK AS SHOWN.

SEC. 2(F).

SER. NO. 76-394,657, FILED 4-11-2002.

JILL C. ALT, EXAMINING ATTORNEY

7007 0220 0004 4712 4257

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To: Ted Podhorcer
Street, Apt. No.; or PO Box No.: P.O. Box 292-WOB
City, State, ZIP+4: West Orange, NJ 07052

PS Form 3800, August 2006 See Reverse for Instructions

7007 0220 0004 4712 4240

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For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To: Theodore M. Podhorcer
Street, Apt. No.; or PO Box No.: 14 Haller Rd.
City, State, ZIP+4: W. Orange, NJ 07052-2030

PS Form 3800, August 2006 See Reverse for Instructions

Terrie Quinton

From: Douglas W. Lytle
Sent: Tuesday, October 09, 2007 3:43 PM
To: 'dns@dninvestmentgroup.com'; 'Admin@DNinvestmentgroup.com'
Cc: Scott L. Metzger
Subject: Letter to Mr. Podhorcer re domain name registration

Dear Mr. Podhorcer:

Attached please find a letter from Scott Metzger of our firm concerning your recent registration of the domain name, expresstire.com.

Thank you.

Sincerely,

Doug Lytle

Douglas W. Lytle, Esq.
Duckor Spradling Metzger & Wynne
A Law Corporation
3043 4th Avenue
San Diego, CA 92101-7915
619-209-3000 (Telephone)
619-209-3043 (Fax)
www.dsmwlaw.com (Web site)
lytle@dsmwlaw.com (Email)

**** CONFIDENTIAL INFORMATION ***** CONFIDENTIAL INFORMATION *****

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IRS Circular 230 Legend: If any advice concerning U.S. Federal tax issues is contained in this communication or attachments, such advice is not intended to be used and cannot be used for the purpose of avoiding penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Origin ID: SDMA (619)209-3036
Terrie Quinton
Duckor Spradling Metzger & Wyn
3043 4th Avenue

San Diego, CA 92101

FedEx. Express

E

CLS080607/21/23

SHIP TO: (619)209-3000 BILL SENDER

Theodore M. Podhorcer

14 Haller Rd.

West Orange, NJ 070522030

Ship Date: 19NOV07
ActWgt: 1 LB
System#: 7233966/INET7091
Account#: S *********

Delivery Address Bar Code

Ref # 9997-013 (Express Tire)
Invoice #
PO #
Dept #

TRK# 0201 7924 5807 0735

TUE - 20NOV A1
STANDARD OVERNIGHT
RES

EWR
NJ-US
07052

NG-MMUA

Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

EXHIBIT 6
PAGE 33

Terrie Quinton

From: TrackingUpdates@fedex.com
Sent: Tuesday, November 20, 2007 10:56 AM
To: Terrie Quinton
Subject: FedEx Shipment 792458070735 Delivered

This tracking update has been requested by:

Company Name:	Duckor Spradling Metzger & Wyn
Name:	Terrie Quinton
E-mail:	quinton@dsmwlaw.com

Our records indicate that the following shipment has been delivered:

Reference:	9997-013 (Express Tire)
Ship (P/U) date:	Nov 19, 2007
Delivery date:	Nov 20, 2007 1:52 PM
Sign for by:	Signature Release on file
Delivered to:	Residence
Service type:	FedEx Standard Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Residential Delivery Deliver Weekday
Tracking number:	792458070735

Shipper Information	Recipient Information
Terrie Quinton	Theodore M. Podhorcer
Duckor Spradling Metzger & Wyn	14 Haller Rd.
3043 4th Avenue	West Orange
San Diego	NJ
CA	US
US	070522030
92101	

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 12:55 PM CST on 11/20/2007.

To learn more about FedEx Express, please visit our website atfedex.com.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or visit us at fedex.com.

EXHIBIT 6
PAGE 34

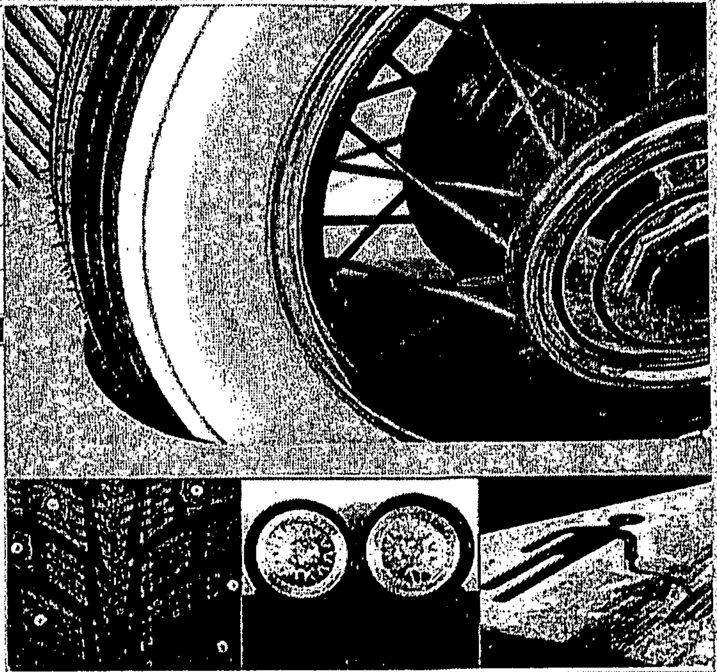
This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go tofedex.com.

EXHIBIT "7"

EXPRESSTIRE.COM **Don't reinvent the wheel, just realign it**

Michelin Tires | Bridgestone Tires | Goodyear Tires | Dunlop Tires | Yokohoma Tires | Uniroyal Tires | Pirelli Tires | Yokohama

- TIRES REVIEW
- WINTER TIRES
- DISCOUNT TIRES
- WHOLESALE TIRES
- TIRE SIZE
- SUV TIRES
- PERFORMANCE TIRES



Traction is key and it starts with your tires. Even vehicles with ABS, Traction Control and All-Wheel Drive still rely on their tires for maximum traction in winter. Get the traction you need.

Related Topics: Snow Tires | All Terrain Tires | Discount Wheels | Truck Wheels | Chrome Rims | Custom Wheels | Alloy Wheels

Search

Bfgoodrich Tires | Continental Tires | Firestone Tires | Kumo Tires | Cooper Tire | Kelly Tires | Recycled Tires | Whitewall Tires

Disclaimer » Bookmark this page

EXHIBIT 7
PAGE 35

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 148133 - SH
*** * C O P Y * ***
February 27, 2008
11:58:57

Civ Fil Non-Pris
USAO #.: 08CV0368
Judge..: BARRY T MOSKOWITZ
Amount.: $350.00 CK
Check#.: BC6830

Total-> $350.00

FROM: L&M TIRE CO V. DN INVESTMENT G

ORIGINAL

CIVIL COVER SHEET

I(a) PLAINTIFFS
L & M TIRE COMPANY, a California corporation doing business as EXPRESS TIRE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF ______
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
DN INVESTMENT GROUP, LLC, a New Jersey limited liability company, and DOES 1-10, inclusive

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Essex County, NJ
(IN U.S. PLAINTIFF CASES ONLY)

FILED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Scott L. Metzger (SBN 89718)
Douglas W. Lytle (SBN 178315)
Duckor Spradling Metzger & Wynne
3043 4th Avenue
San Diego, CA 92103
619-209-3000

ATTORNEYS (IF KNOWN)

08 FEB 27 PM 12: 01
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
'08 CV 0368 BTM LSP
BY: CP DEPUTY

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- [ ] 1 U.S. Government Plaintiff
- [X] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE FOR DEFENDANT)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated or Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated and Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. ORIGIN *(PLACE AN x IN ONE BOX ONLY)*

- [X] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] Appeal to District Judge from Magistrate Judgment

V. REQUESTED IN COMPLAINT: [ ] CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ 0.00

Check YES only if demanded in complaint:
JURY DEMAND: [X] YES [ ] NO

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) Cybersquatting, Federal Trademark Infringement, and Unfair Competition Under Section 43(A) of the Lanham Act, and California Law 15 USC 1051

VII. NATURE OF SUIT *(PLACE AN x IN ONE BOX ONLY)*

OTHER STATUTES
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce/ICC Rates/etc.
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 810 Selective Service
- [ ] 850 Securities/Commodities/Exchange
- [ ] 875 Customer Challenge 12 USC 3410
- [ ] 891 Agricultural Act
- [ ] 892 Economic Stabilization Act
- [ ] 893 Environmental Matters
- [ ] 894 Energy Allocation Act
- [ ] 895 Freedom of Information Act
- [ ] 900 Appeal of Fee Determination Under Equal Access to Justice
- [ ] 950 Constitutionality of State Statutes
- [ ] 890 Other Statutory Actions

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- [ ] 153 Recovery of Overpayment Of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury

PERSONAL INJURY
- [ ] 362 Personal Injury-Med Malpractice
- [ ] 365 Personal Injury-Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/Accommodations
- [ ] 444 Welfare
- [ ] 440 Other Civil Rights

PRISONER PETITIONS
- [ ] 510 Motions to Vacate Sentence Habeas Corpus
- [ ] 530 General
- [ ] 535 Death Penalty
- [ ] 540 Mandamus&Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition

FORFEITURE/PENALTY
- [ ] 610 Agriculture
- [ ] 620 Other Food & Drug
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 630 Liquor Laws
- [ ] 640 R.R. & Truck
- [ ] 650 Airline Regs
- [ ] 660 Occupational Safety/Health
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Mgmt. Relations
- [ ] 730 Labor/Mgmt. Reporting & Disclosure Act
- [ ] 740 Railway Labor Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [X] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS - Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? __X__ No ______ Yes

If yes, list case number(s): ______

FOR OFFICE USE ONLY: [ ] *Pro Hac Vice fee:* [ ] *paid* [ ] *not paid*

Applying IFP ______ *Judge* ______ *Mag. Judge* ______

CCD-JS44

CR 148133 $350 SA 2/27/08

CIVIL COVER SHEET
(Reverse Side)

AFTER COMPLETING THE FRONT SIDE OF FORM JS-44C, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? __X__ No _____ Yes

If yes, list case number(s): ________________

CIVIL CASES ARE DEEMED RELATED IF A PREVIOUSLY FILED CASE AND THE PRESENT CASE:

(CHECK ALL BOXES THAT APPLY)

- ☐ A. Appear to arise from the same or substantially identical transactions, happenings, or events;
- ☐ B. Involve the same or substantially the same parties or property;
- ☐ C. Involve the same patent, trademark or copyright;
- ☐ D. Call for determination of the same or substantially identical questions of law, or
- ☐ E. Likely for other reasons may entail unnecessary duplication of labor if heard by different judges.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides. (Use an additional sheet if necessary)

☐ CHECK HERE IF THE US GOVERNMENT, ITS AGENCIES OR EMPLOYEES IS A NAMED PLAINTIFF.

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☐ CHECK HERE IF THE US GOVERNMENT, ITS AGENCIES OR EMPLOYEES IS A NAMED DEFENDANT.

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary).

NOTE: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): X [signature] **Date** 2-27-08

NOTICE TO COUNSEL/PARTIES: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3.3 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

NATURE OF SUIT CODE	ABBREVIATION	SUBSTANTIVE STATEMENT OF CAUSE OF ACTION
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))